No. 15167

IN THE

United States Court of Appeals

FOR THE NINTH CIRCUIT

NATIONAL LABOR RELATIONS BOARD,

Petitioner,

vs.

LOCAL NO. 1400, UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, AFL-CIO; LOS ANGELES COUNTY DISTRICT COUNCIL OF CARPENTERS, UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, AFL-CIO; LOCAL NO. 1046, UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, AFL-CIO; and SAN BERNARDINO AND RIVERSIDE COUNTIES DISTRICT COUNCIL OF CARPENTERS,

Respondents.

On Petition for Enforcement of an Order of the National Labor Relations Board.

BRIEF FOR RESPONDENTS.

ARTHUR GARRETT,
2200 West Seventh Street,
Los Angeles 57, California,
Attorney for Respondents.

Parker & Son, Inc., Law Printers, Los Angeles. Phone MA. 6-9171.

TOPICAL INDEX

TABLE OF AUTHORITIES CITED

Cases

Statutes

No. 15167

IN THE

United States Court of Appeals

FOR THE NINTH CIRCUIT

National Labor Relations Board,

Petitioner,

vs.

Local No. 1400, United Brotherhood of Carpenters and Joiners of America, AFL-CIO; Los Angeles County District Council of Carpenters, United Brotherhood of Carpenters and Joiners of America, AFL-CIO; Local No. 1046, United Brotherhood of Carpenters and Joiners of America, AFL-CIO; and San Bernardino and Riverside Counties District Council of Carpenters,

Respondents.

On Petition for Enforcement of an Order of the National Labor Relations Board.

BRIEF FOR RESPONDENTS.

Jurisdiction.

In the record of this case will be found the Order of the National Labor Relations Board together with the Opinion of Member Oliver H. Peterson, dissenting in part [R. 297-317], which we think sets forth the applicable law and the correct view of the evidence in the Palm Springs case.

The alleged unfair labor practices in the case numbered 22-CB-548, hereinafter called the Santa Monica case, occurred in the Santa Monica-Pacific Palisades area of Los

Angeles County, and the alleged unfair labor practices in case No. 21-CB-600, hereinafter called the Palm Springs case, occurred in the Palm Springs area of Riverside County.

Statement of the Case.

"Commerce."

The Board found that by the alleged unfair labor practices, Respondent violated Section 8(b)(1)(A) and (2) of the Act, which violations affected "commerce" within the meaning of the Act. The reasons for these findings as to "commerce" are by no means as clear as Petitioner would have us believe.

The rationale of these findings in the Santa Monica case is unclear, and in the Palm Springs case entirely obscure.

In the Santa Monica case the Intermediate Report speaks of a "web" or "complex" of "enterprises," which words are probably intended to denote, in plain language, that members of the Pardee family and others, have various interests in certain partnerships and corporations operating in California and Nevada, and seems to assert further that commerce jurisdiction is satisfied by reason of various services rendered by these partnerships and corporations to each other. [R. 51-57.] The legal basis for this conclusion is not apparent and the order of the Board, while adopting the Intermediate Report in part [R. 298], fails to advise us upon what theory the Board considered that commerce jurisdiction had been established. The other basis upon which the Intermediate Report attempts to meet the requirements of commerce jurisdiction is upon presumed evidence of the membership of the employer in the Building Contractors Association, some members of which are alleged to be engaged in

businesses and in serving businesses affecting commerce. The trouble with this contention is that in the Pardee "web" or "complex" there are various enterprises of the same or similar names, and there is no evidence that the employer involved in the Santa Monica case was a member of any kind in B.C.A. Furthermore, the record affirmatively shows that the B.C.A. has two groups of membership, one group being members who are represented in labor relations matters by the Association and one group who are not. The record shows that but one of the enterprises in the whole Pardee "web" or "complex" was in this B.C.A. group for which the Association handled labor relations, and entitled to sign its contracts, while all of the other enterprises were not, and may have been, as far as this record is concerned, operating on an open shop and absolutely non-union basis. There is no evidence that employment of the charging parties, Dowdall and Dockery, was contemplated by Pardee Construction Company, the single enterprise which was in the labor relations group, an enterprise in course of dissolution, and not by an active enterprise known as Pardee Construction Company No. 2.

Petitioner's Brief, page 14, attempts to lead us to a tacit acceptance that commerce jurisdiction in the Santa Monica case is satisfied and established under the doctrine of *Joliet Contractors Assn. v. N. L. R. B.,* 193 F. 2d 833, by membership of "Pardee" in the B.C.A., the assumption being that all members of the B.C.A. are represented in labor relations by the Association and are bound by its contracts. Petitioner's Brief, page 4, even goes so far as to say "All members of A.G.C. and B.C.A. were considered signatory to these contracts * * *."

This is not true. There are two classes of membership in B.C.A. The employer or prospective employer of the

charging parties is neither a member of B.C.A. nor a party to its contract with Respondents, assuming there is any such contract.

The testimony of Edward M. Sills, Executive Vice-President of Building Contractors Association of California, Inc., referred to in this Brief as Building Contractors Association, or as B.C.A., is in the record [R. 666], as follows:

"(Testimony of Edward M. Sills.)

Cross-Examination * * *

Q. (By Mr. Garrett): Now, is it a part of the service—Pardee is a paid up member, I take it, of the Building Contractors Association? A. Yes, he is, they are. [1395]

Q. You say 'he is' or 'they are'? A. They are.

Q. Who is and who are? A. Pardee Construction Company.

Q. Pardee Construction Company, right? A. Yes.

Q. And not Pardee-Phillips and not Pardee Construction Company No. 2? A. No.

Q. And as paid up members of yours, they are entitled to all your services, are they not? A. Yes, sir.

Q. And they are entitled to your services in labor relations? A. Yes.

Q. They are one of your members who you regard as being in that group that you handle labor relations for, correct? A. That's right. [1396]

* * *"

The Pardee Construction Company referred to by Mr. Sills had been in process of dissolution since 1952 which was the last year it engaged in building construction under license as required by the State of California [R. 103] and beginning with the 1953-1954 fiscal year the license

was held by Pardee Construction Company No. 2, also a partnership. The presumption is that Pardee Construction Co. was not violating the law by operating as a general contractor. (*Loving & Evans v. Blick,* 33 Cal. App. 2d 603.)

B.C.A. members of the eligible group, *i.e.,* that class of members represented for labor negotiations and contracts by the Association, had prior to 1946 signed the agreements, but since that date had become "signatory" by sending a post card to the Association. [R. 528.] The only possible employer of the charging parties purporting to be signatory to a B.C.A. contract or represented by B.C.A. at any time material in this case is Pardee Construction Company. [R. 532.] The signature is by the post card method described above and is for the years 1948 and 1949. [R. 550, 553, 554.]

As to the Palm Springs case, there is nothing said either in the Intermediate Report or in the Board's Order which shows a basis for commerce jurisdiction at all; the facts simply being that there was no employment ever contemplated and no employer ever contemplated. Discussions in the Intermediate Report about labor contracts between various employers and employers' associations and the Respondents are therefore simply irrelevant.

With respect to facts which connect any of the alleged acts of Respondents in this case to the flow of interstate commerce, or of having any effect upon such commerce, the matter is quite simple. There were none. There was no evidence that any employer, named or unnamed, was connected with any of the alleged acts of Respondents. The Board has simply swallowed the incredible Findings of its Trial Examiner. [R. 72.] There was no evidence that any employer, unnamed or named, for which Mr. Dowdall worked, while within the jurisdiction of these

Respondents, imported or exported any materials or other things across state lines, or that any materials used by any of them, if they used any, were obtained either directly from out of the State of California or through any intermediary. Neither was it shown that any employer involved in this case was a member of either the Associated General Contractors or Building Contractors Association, which are purported to be associations of contractor employers having contracts with Respondents.

Unfair Labor Practices.

In the Santa Monica case, the charging parties pretended to be carpenters looking for employment, but they were actually sea-lawyers looking for a lawsuit. They came to California fresh from a recovery of damages against the Anchorage, Alaska, local of the Corpenters and immediately set about laying the foundation for a similar action here.

The Carpenters local unions in Los Angeles County provided a referral service. None of their contracts provided that individuals so referred for employment be union members, either of the local unions or of the parent organization. This service was available for a few dollars, actually three dollars. The services of a private intelligence agency, or employment agency as they are commonly called, would have cost from one-third to one-half of the first month's wages, or about fifty times as much, although this is not in the record. Approaching this situation, Dowdall and Dockery, instead of handing in their dues books, which they had with them, chose to pay the three dollars. It is upon the basis of their exercise of this alternative that the Board has found violation of Section 8(b)(2) and of Section 8(b)(1)(A) of the Act.

In the Palm Springs case Mr. Dowdall, the charging party, was contemplating no employment, but only the collection of what is termed unemployment insurance indemnity. There is no showing that his application to the union was made for any other purpose than that of saving him from the trouble of having to go and look for a job, a search for employment being a condition for receiving the unemployment insurance payments. There was no connection between his application to the union and any employment, which he did not want, nor with any employer. He had absolutely no intention of working for a union employer under referral by the union and he tells this in his own words [R. 655]:

"(Testimony of Clarence A. Dowdall.)

Q. (By Trial Examiner): Do I understand from your testimony, then, that at the time that this document, General Counsel's 30, was given to you by Mr. Adams at or about the same time you did sign the sort of list you indicated? [1292] A. Yes, I signed that list, yes, sir.

Q. Did Mr. Adams or anyone else explain the significance of the signing of the list and what would happen as a result of your having signed it? A. Yes, Mr. Adams told me after I signed the list that, 'Now,' he says, 'you can go back to Indio and give this Employment Bureau man down there this number 61 and then,' he says, 'he will make you eligible at the office to sign up for the unemployment insurance.'

Q. Did he make any other statements by way of explanation as to the significance of your signature on that list? A. He said the, my signature on this list does not entitled you to go to work here. He says, 'You understand that?'

And I says, 'I'm not signing my name on this list with the intentions of asking you for a job, see, or intention of going to work because,' I said, 'I always went out and found my own job.' [1293.]"

[R. 842]:

"(Testimony of James Adams.)

Recross-Examination

Q. (By Mr. Heimann): Mr. Adams, on January 7 when Mr. Dowdall, when you put Mr. Dowdall's name on the list on the [1827] out-of-work list— A. Yes.

Q. —did you say to him that that did not entitle him to go to work? A. No, that is merely for record for out of work.

Q. I know, you so testified. My question is, didn't you tell them that the fact that his name was on the list did not entitle him to go to work? A. No, I didn't tell him that because I couldn't put him to work anyway because 50 men were out of work, I had no jobs.

Q. Yes. Didn't you say to him that that was for unemployment only, for the unemployment compensation only but that that didn't give him the right to go to work? A. I merely stated there that by placing the name on that list he would go out in rotation with the rest of the men and, also, for the unemployment office, his name and number.

Q. And did you tell him that until his name came up he could not— A. He said he didn't want to work.

Q. He said he didn't want to work? A. He said he merely wanted his name on there on draw unemployment insurance.

Q. Did he say he didn't want to work or didn't ask you to send him to work? A. That's right. [1828.]"

ARGUMENT.

The only construction project involved in this proceeding is the one at Pacific Palisades, near Santa Monica. Suspicion rather than credible evidence, exists that it was operated, at the critical period in the case, December, 1953, by Pardee Construction Company, as general contractor, which partnership had no contractor's license in that year.

Neither that partnership, nor any of the other enterprises considered as being in the "web" or "complex" by the Intermediate Report shows in this record (1) as shipping or receiving anything across state lines, (2) as receiving anything for the Pacific Palisades building project across state lines.

If Pardee Construction Company was operating the construction project involved in this case, that was its last and only operation.

The burden of proving assertable jurisdiction is, of course, always on the General Counsel. In this matter he has sought to bring his proof, in the Santa Monica case, within two theories, (1) that Pardee Construction Company is engaged directly in a business effecting commerce, or (2) that Pardee Construction Company is a member of an employer's association which in the composite, is engaged in a business having an effect upon commerce. In the Palm Springs case he relies on only the theory that the composite of employers, taken in the aggregate, have sufficient impact upon the flow of commerce so that the aggregate activities affect the commerce flow.

Without going into a detailed recitation of the voluminous testimony submitted by the General Counsel, most if not all of which is hearsay uncorroborated, it is suffi-

cient to observe that at no place in the record is there any evidence that Pardee Construction Company, the only named employer in the entire case, shipped anything across state lines in any amount. While there is some hearsay evidence with respect to the value of materials used by that company on the building project involved in these proceedings, there is not a scintilla of evidence as to the source of the origination of such materials. This lack of probative evidence upon a point so vital, taken in connection with the consideration that the projects into which these materials were processed were residences, purely local in character, having not the faintest relation to interstate commerce, patently demonstrates that Pardee Construction Company was not engaged in a business affecting commerce and could not, under any consideration or decision of the Board, be brought within the rules of assertable jurisdiction now followed by the Board. To buttress this obvious deficiency, General Counsel burdens the record with uncorroborated testimony concerning certain business connections which some of the individual partners of Pardee Construction Company have in building projects in Las Vegas, Nevada. Here, again, the General Counsel has failed to meet his burden of proof. It is clear that the Nevada operations, stand alone, and no testimony in the record in that respect meets any of the jurisdictional proof requirements of the Board, for like the Pardee Construction Company operations, the materials processed into the Nevada activities are unaccounted for as to source of origination or any connection with commerce, directly or indirectly. Another thing is abundantly apparent, and that is the lack of any proof designed to show the interchange or flow of any materials between the Nevada operations and those of Pardee Construction Company in California. PARDEE

CONSTRUCTION COMPANY HAD NO OPERATIONS AND CONDUCTED NO BUSINESS OUTSIDE OF THE STATE OF CALIFORNIA.

The only connection, if it can legally be called a connection, between Pardee Construction Company and the Nevada operations is through the fact that certain partners of Pardee Construction Company were stockholders in companies conducting the Nevada operations. We submit this is not enough. To hold to the contrary would be tantamount to holding that any person living in California owning a substantial amount of stock in a company operating outside of the state was, *per se,* engaged in a business affecting commerce. The Act permits of no absurd results.

Addressing ourselves next to the consideration of General Counsel's "aggregate" theory, we urge failure of proof.

In furtherance of this theory, General Counsel produced witnesses whose hearsay testimony was to the effect that they were members of an employer's association called Associated General Contractors (herein called A.G.C.), and had engaged in building a military project at Twenty-nine Palms, California. However, no attempt was made to show *that any employer* involved in any phase of these proceedings were members of the A.G.C. This type of testimony does not support the aggregate theory in either of the cases, and especially in the Santa Monica case, because there is no showing that Pardee Construction Company is, or ever had been, a member of A.G.C. Further, this testimony does not aid the General Counsel in the Palm Springs case, as there is no evidence that the military project was, in any wise, connected with Local 1046, or for that matter that the project was con-

ducted under any union contracts with any unions. As we have previously pointed out, in the respect of this latter case, there was no proof that any employer for whom the charging party worked was a member of A.G.C. or any other employer association. We submit that as to the Palm Springs case there is no proof of any nature to bring that case under any conceivable assertable jurisdictional standards of the Board.

There was an attempt on the part of the General Counsel to prove that Pardee Construction Company was a member of Building Contractors Association (herein called B.C.A.) and, thus, to bring the Santa Monica case within assertable jurisdiction under the "aggregate" theory. It is not our purpose to belabor the unconvincing quality of the evidence designed to show that Pardee Construction Company was a member of B.C.A. We urge that, at best, the evidence creates only a suspicion of membership. Assuming, for the purpose of this brief, that the evidence in this respect is sufficient, the proof does not meet the aggregate theory requirements. The testimony, in this connection, was produced through witnesses testifying that Oltman Construction Company, had done "construction" work for Firestone Rubber Company, B. F. Goodrich Company, and some aircraft manufacturing plants, all within the State of California. No testimony was advanced to show that any of this construction went into any product which later found its way into interstate commerce. The record is completely silent as to the use any of these constructions were put by any of the recipients. *There was no affirmative proof of any connection with commerce.*

In *Carpenter & Skaer Co.*, 90 NLRB 417, at 419, the Board set forth the tests as would apply when asked

to assert jurisdiction under the aggregate theory. There the evidence showed that 90% of all industrial and commercial construction in the county in which the case arose was performed by members of an association in volume amounting to 20 million dollars, of which $2,000,000.00 represented purchase from outside the state. None of these evidentiary requirements are met in the instant matter. (See also *Jamestown Builders Exchange,* 93 NLRB 386, and *Insulator Contractors Assoc.,* 110 NLRB 105.) Then too, the hearsay character of the evidence produced on this phase is completely uncorroborated and does not amount to substantial evidence sufficient to sustain a finding of assertable jurisdiction. (*N. L. R. B. v. Haddock Engineers, Ltd.* (C. A. 9), 215 F. 2d 734, 34 LRRM 2789; *Consolidated Edison Co. v. N. L. R. B.,* 305 U. S. 197.)

The complaint in this case charges that respondents refused to issue "clearances" to Dowdall and Dockery. It is to be noted that there was no allegation that such a refusal, if it did occur, caused or attempted to cause "an employer to discriminate against an employee with respect to whom membership in such organization has been denied or terminated on some ground other than his failure to tender the periodic dues and initiation fees uniformly required as a condition of *acquiring or retaining membership.*" (Sec. 8(b)(2), N. L. R. A., as amended; emphasis supplied.)

There is no room for concluding, on this record, that either Dowdall or Dockery was an "employee" within the statutory definition of "employee." (Sec. 2(3).)

Likewise, the evidence does not admit to the finding that any of these respondents has any contact with Pardee Construction Company which caused Pardee Construction

Company to refuse to give jobs to either of these two men. There is a complete absence of anything flowing between the company and these respondents other than the fact, if it be a fact, that each are parties to a collective bargaining contract which the General Counsel admits is not improper or illegal.

The contract itself is unfairly presented in the Board's brief, pages 4 and 5, as to its hiring provisions, by the omission of Article II-A, to which these provisions are subject, and which reads as follows [R. 498-450]:

"II.

Union Recognition

A. That the Contractors hereby recognize the Unions who are signatory hereto as the sole and exclusive collective bargaining representatives of all employees of the Contractors signatory hereto over whom the Unions have jurisdiction, as such jurisdiction is defined by the Building and Construction Trades Department of the American Federation of Labor as of the date of this Agreement. It is understood that the Unions do not at this time, nor will they during the term of this Agreement, claim jurisdiction over the following classes of employees: executive, civil engineers, and their helpers, superintendents, assistant superintendents, master mechanics, time keepers, messenger boys, office workers or any employees of the Contractor above the rank of craft foreman.

That subject to this understanding the Contractor shall have entire freedom of selectivity in hiring and may discharge any employee for any cause which he may deem sufficient, provided there shall be no discrimination on the part of the Contractor against any employee, nor shall any such employee be discharged

by reason of any Union activity not interfering with the proper performance of this work.

It is the intention of the parties that all workmen covered hereby shall be or become forthwith upon employment and remain continuously, members in good standing of the International Unions signatory hereto through their affiliated Local Unions having work and area jurisdiction and on whose behalf this Agreement is executed, as a condition of employment, and that this provision shall become operative without further notice or amendment whenever amendments to or judicial interpretations of the Labor Management Relations Act of 1947 remove the inhibitions against the application of this paragraph now existing under the present wording and judicial interpretations of that Act.

It is agreed that all workmen covered hereby shall be or become, not more than thirty (30) days after employment and remain continuously, members in good standing of the International Unions signatory hereto through their affiliated Local Unions having work and area jurisdiction and on whose behalf this Agreement is executed, and shall remain available for work as a condition of employment."

Did either Dowdall or Dockery ever visit the Pardee Construction job site or talk to a representative of that company about employment of any kind or character at any time within the period covered by the complaint? They each said that they did. They offered no evidence of any person connected with Pardee Construction Company to corroborate their statements. Admittedly, none of Respondents or their representatives were present at any conversation between Pardee Construction Company and these two men. Such evidence is of the clearest hear-

say. Without corroboration that evidence is of no probative value whatsoever. (*N. L. R. B. v. Haddock Engineers, Ltd., supra; Consolidated Edison Co. v. N. L. R. B., supra.*)

These men presented to Savage, an employee of Local 1400, pieces of paper bearing no identifying printing or markings purportedly signed by a foreman of Pardee Construction Company. No evidence was adduced as to the genuineness of the signature. Whether the foreman signed those pieces of paper or not is undisclosed by this record. For all that appears in the records, those pieces of paper could have been signed by anyone. They, too, are of the clearest hearsay, and are entitled to no weight.

What occurred in this case, the practice that was followed, was a production of the Board's Regional Director and his legal adviser. Both witness Boyce and witness O'Hare were graphic in the participation of the Regional Director and his lawyer in not only the drafting of the instrument, but also in its practical explanation made by the Director and his lawyer at a meeting of Respondents' representatives and other unions held for that purpose. May the Trial Examiner or the Board now penalize any person which followed the context of that instrument when the Regional Director went to such pains to draft and explain it. Are persons to be found guilty when they follow the dictates of the party charged with a proper enforcement of the law? The Board has held that under such circumstances no finding of guilt is justified.

There is nothing improper or illegal in the way Respondents' agents handled this matter. First, they are presented with an unauthenticated piece of paper which they are asked to treat as an instruction to clear these men for work. Secondly, these men, members of the Carpenters union and subject to its usages and customs,

were acquainted with the procedural requirements incumbent upon them in their exercise of the privileges of union members. They knew, in advance, that Local 1400 had a work list, because Dockery had worked under that local and had attended its meetings, and had been present at its hall on numerous occasions. These men also, prior to going on the job, if they did, had discussed these various phases with a trustee of Local 1400, and had been told what was necessary for them to do. They are not in a position to plead ignorance of custom and, in fact, their very words show their acquaintance with the practice and custom. Dockery and Dowdall, when they first went to Savage, showed their books *"and asked for a work permit."* Each of them knew that it was not necessary for them to obtain a work permit. They knew they could deposit their dues books and be under the privileges of the local without doing another act, and most certainly they knew the deposit would not entail the outlay of money, whereas the obtaining of a work permit did. Each of them referred to the money paid out for permits as traveling dues. Each knew they were dues currently required by the union. Each of them well knew that if they were to receive the privileges and protections of the Local they must comply with the clear duty to pay their traveling dues or else deposit their books. The choice was theirs. They preferred to pay their traveling dues rather than deposit their books.

It must also be noted the absence of any evidence that *the union conditioned the employment of these men upon membership or non-membership in a union.* The condition, if it was imposed, was, by only their testimony, imposed by the foreman of Pardee Construction Company and not by any representative of Respondents.

These men were seeking to avail themselves of a hiring service maintained by the union. They willfully submitted themselves to the universal requirements of their union. After their compliance with the rules they had no further difficulty obtaining the hiring services and, through those services, jobs.

Hiring arrangements, such as Local 1400 and Local 1046 maintain, are not *per se* illegal or improper (*Eichleay Corp. v. N. L. R. B.* (C. A. 3), 32 LRRM .....; *N. L. R. B. v. Swinnerton* (C. A. 9), 31 LRRM 2384; *Webb Construction Company v. N. L. R. B.* (C. A. 8), 30 LRRM 2108). The Board held in *Hunken-Conkey Construction Co.,* 95 NLRB No. 56, that a hiring hall arrangement between an employer and a union was not illegal even though the employer agreed to hire only through the union, and when the contract makes the union the sole source of labor supply by "referral" for employment, no violation of the Act occurs (*American President Lines,* 101 NLRB 1417) and the Board held that a union and employer did not violate the Act by alleged refusal to grant working cards where it was not proved that (1) the employer was a party to an illegal contract, (2) that a discriminatory hiring arrangement existed, and (3) the union and its business agent had not demanded or requested the employer not to hire applicants. (*Brotherhood of Carpenters (Wroan & Son),* 106 NLRB No. 46.) To the same effect are *Mundet Cork Corp.,* 96 NLRB 175; *United Mine Workers,* 100 NLRB No. 64; *N. L. R. B. v. Meat Cutters Union,* 31 LRRM 1553, this latter case going so far as to hold that no illegality obtains unless the employer "must have been told" of the union's opposition to the proposed employment.

When Dowdall went to Palm Springs he had one thing in mind. He wished to obtain unemployment compensa-

tion through a registry in the states rather than through the registry in Alaska. His first act was to visit the Indio office of the unemployment compensation board to make such an application but, upon inquiry, learned that he must be certified as out of work before he could become eligible for compensation. It was explained to him that if he was a member of a union and out of work the union could function as the certifying agent. Dowdall then went to Local 1046, where he requested permission to sign that Local's out-of-work list, in order to complete his application for unemployment compensation. He stated he did not wish to be on the list for the purpose of obtaining a job but that a number from the work list would complete his application to the State for compensation. This view of the evidence is the only one that will accord itself to all the available facts. While there was a conflict of evidence as to whether Dowdall made any request for a job, the undisputed evidence points the other way. In fact, he had a job when he made the application. It is, however, quite clear that he did not seek a clearance from this Local, nor was one necessary to obtain or maintain employment. His own evidence that he got his own *jobs* and worked on them without interference negatives any conclusion that a clearance was necessary or that one had been refused him.

The General Counsel advances the idea that Dowdall was "exacted" of permit fees, but the fee that he was required to pay, at least on January 7th, was not for the purpose of obtaining employment, but for the purpose of qualifying for unemployment compensation and, by no stretch of the imagination, can that he termed an unfair labor practice. There appears from this evidence not the slightest indication that Dowdall was restrained from anything or coerced in any manner. Manifestly, there is in-

sufficient probative evidence to sustain a finding that Section 8(b)(1) was violated, and it is totally absurd to even consider, on this evidence, a finding that the union caused or attempted to cause any employer to discriminate against Dowdall or any other employees.

It will be noted that Dowdall was apparently working for Cornelius and Lampman at the time of the alleged unfair labor practice and at the time of filing the charge, 21 CB 600, but nowhere in the record is there any mention of this employer. [R. 1, 2.] We do not know whether the employer is or is not a member of an association, a party to a labor contract, union or non-union.

In the Santa Monica case Dowdall, actually the charging party and Dockery, who has been referred to above as a charging party at times, were dispatched to work and in the Palm Springs case no work was desired. There was no violation of any of the rights guaranteed by Section 7 of the Act.

N. L. R. B. v. Amalgamated Local 286, 222 F. 2d 95, 98;

American Newspaper Pub. Assn. v. N. L. R. B., 193 F. 2d 782, 800.

Respectfully submitted,

ARTHUR GARRETT,

Attorney for Respondents.